IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 29559 OF 2005(R)

OS.123/1999 OF SUB COURT, TIRUR

PETITIONER:

1. POTTETH SULOCHANA AMMA,
KARUKAMANI KALAM, P.O.CHITTUR COLLEGE,
PALAKKAD DT.

2. POTTETH SURESH, S/O.RADHA,
FLAT B3, GALAXY ARCADE, P.T.ABDU RAHIMAN ROAD,
KALOOR.

BY ADV. SRI.K.RAMACHANDRAN
SRI.K.MOHAMMED FAISAL NAHA

RESPONDENTS:

1. GOPALAN NAIR, C/O.SQ.LDR GOPALAKRISHNAN,
HQ TRAINING COMMAND, IAF, J.C.NAGAR,
BANGALORE-560 006.

2. SANKARAN NAIR, S/O.LAKSHMIKUTTY AMMA,
POTTETH HOUSE, TIRUR.

ADDITIONAL RESPONDENTS :-

3. MRS. P.G. NAIR, 30- ANUGRAH GARDENS,
DHANALAKSHMIPURAM, SINGANELLORE,
TRICHY ROAD, COIMBATORE - 641 005.

4. K. GOPALAKRISHNAN, DO. DO.

5. P.R. LATHALAKSHMI, D/O. POTTETH RADHA AMMA,
T.C. NO. 29/1119, LAKSHMI SADAN,
DEVI NAGAR, PALKULANGARA,
THIRUVANANTHAPURAM-24.

(R3 & 4 ARE IMPLEADED AS THE L.RS. OF R1 AS PER ORDER DATED 19.6.07 IN I.A. 1121/2006.)

(R5 IS IMPLEADED AS PER ORDER DATED 29.6.2007 IN I.A. 8676/2007)

BY ADV. SRI.T.KRISHNAN UNNI
SRI.P.SANTHALINGAM
SRI.KAYALATT KUTTYKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 9.7.2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

WP(C) 29559/2005

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1	TRUE COPY OF THE ORDER DATED 19.7.2005 IN I.A. 1465/2000 IN O.S. 123/99 OF THE SUB COURT, TIRUR.
EXT.P2	TRUE COPY OF THE ORDER IN I.A. 2473/2004 DATED 6.1.2005 OF THE SUB COURT, TIRUR.

RESPONDENTS' EXHIBITS:

NIL.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

WP(C)

P.R. RAMAN J.

= = = = = = = =

W.P.(C) NO. 29559 OF 2005

= = = = = = = = = = = = = = = = =

DATED THIS, THE 9TH DAY OF JULY, 2007.

JUDGMENT

In the final decree proceedings in a partition suit, an Advocate Commissioner was appointed to partition the property by metes and bounds. The Advocate Commissioner filed his report. Petitioner herein filed I.A. 2473/2004 to remit the commissioner's report and plan, which was allowed. Accordingly, the commissioner's report and plan were remitted giving specific direction to the commissioner for effective division of the plaint property. Thereafter he filed his report and plan dated 28.6.2005. Objections were filed by the petitioner to the above report contending that the Commissioner has not acted in accordance with the directions given by this Court. Some of the objections raised by the petitioners were accepted and the court again remitted the matter to the same Commissioner. Two objections were to be considered by the court below; ie. (i) an extent of 25 cents of land was allotted to the first respondent which shall be measured from the east of the 'Madom' towards east and as far as possible the plot shall be compact. But according to the petitioner, the Advocate Commissioner has taken the measurement from further east of the 'Madom'

towards east and so an extent of 33 x 70 is left at the west and that plot cannot be conveniently used by the plaintiffs for any purpose and this objection was not considered by the court below. The explanation of the Commissioner was that the western portion is at a lower level and if that portion is included, plot B will be at two levels and it will not be a compact land. The second respondent submitted that if plot B is measured from west immediately near to the Madom, he may not be able to use conveniently the property because the property will lie at two levels. The second respondent is to be allotted 25 cents and the property must be a compact one. Therefore, the property with the measurement 33 x 70 on the west of plot B will not be useless to the petitioner because the entire property on the north belongs to her. Therefore, the court below found that there is no prejudice caused to the petitioner leaving the plot to the plaintiff. I do not find any reason to interfere with the said finding. There is no miscarriage of justice so as to interfere under Article 226 of the Constitution of India. This contention is therefore, negatived.

2. The next objection is regarding the setting up of 10 cents for 'Madom' and 2 1/2 cents for 'Nagathara". This property is kept in common for the enjoyment of the family including the petitioners. The contention is that there is already a big 'Nagathara' and it is not clear whether 2 1/2 cents is exclusive or inclusive of the same. According to them, 5 cents for

'Madom' will be sufficient. Though the court below found that this will in no way affect the petitioner's interest, if this is kept in common that will reduce the available land for partition. However, it cannot be straight away said that setting apart of 10 cents and 2 1/2 cents is in any way excessive. But if the petitioner is able to place sufficient materials before the court below and the court is satisfied with the consensus of the parties, it may be considered whether some extent should be reduced from out of the land already set apart for 'Madom' and 'Nagathara'. This may be done at the time of passing the final decree.

In the result, the only direction called for in this writ petition is to direct the court below to reconsider the matter regarding the extent of the land set apart to the Nagathara and the Madom and whether any reduction can be made thereof. An opportunity be given to the petitioners to address their submissions and also to other parties and the court will try to reach a consensus among the parties, if possible. The order of the court below is confirmed in all other respects.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-